

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No.400 of 2006 (S/B)

1. Dr. Fasiuddin S/o Sri Anwarul Haq
R/o Haq Clinic, Vijay Nagar, Nai Basti
Stadium Raod, Kashipur, U.S. Nagar
 2. Dr. Habiburrahman S/o Sri Shabbir Amhad
R/o Mohalla Thana, Shakin, Kashipur
U.S. Nagar
 3. Dr. Hasin S/o late Sri Mohd. Sadddiq
R/o Shankarpur Mool Manglaur Road
Ramnagar, Nainital
 4. Dr. Jamshed Alam S/o Sri Gulam Mustafa
R/o village Sultanpur Patti, U.S. Nagar
 5. Dr. Mohammad Yusuf S/o Sri Mangta Hasan
R/o Laksar Town Ward No. 1, Roorkee road, District Haridwar
 6. Dr. Mobin Ahmad Khan S/o Sri Faruq Ahamad Khan R/o line
no.15 Azad Nagar Haldwani, District Nainital
 7. Dr. Zaved Alam S/o Sri Ahsan Ali R/o village Khoja Nagla
P.O. Khudda District Muzarffarnagar
 8. Dr. Farman Khan S/o Sri Ramzan Khan R/o Khanpura Manglaur
Town, Haridwar, District Haridwar
 9. Dr. (Smt.) Farzana Begum D/o Munawwar Hussain
R/o Mohalla Kassawan, Noor Manzil, Post Jwalapur
District Haridwar
 10. Dr. Sawra Khatoon D/o Nizammudin R/o Harbanswala
(Ghisarpadi) ITBP, Road, Mehuwala, Dehradun
 11. Mohd. Qamar S/o Mohd. Umar R/o Mohd. Umar Colour
and Chemical Merchant, Ali Khan Street, Kashipur
District U.S. Nagar
- Petitioners

Versus

1. State of Uttarakhand through
Secretary, Health and Welfare, Dehradun
 2. Director, Department of Ayurvedic Evam
Unani Dehradun
- Respondents

Sr. M.S. Bisht learned Advocate i/b for Sri Gopal Narain learned counsel for the petitioners.

Sri Lalit Sharma learned Brief Holder for respondents.

Coram: - Hon'ble J.C.S. Rawat, J.

Hon'ble Dharam Veer, J.

Per: Hon'ble J.C.S. Rawat, J. (Oral)

We have heard learned counsel for the parties.

2. This is a petition filed under Article 226 of the Constitution of India for seeking the following reliefs :-

- (i) Issue a writ order or direction in the nature of certiorari quashing the impugned advertisement dated 19.09.2006 and

amended advertisement dated 13.10.2006 (Annexure-4 & 5 to the petition).

- (ii) Issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper on the basis of the facts and circumstances of the case.
- (iii) Award the cost of the petition to the petitioners.

3. It has been pleaded in the petition that the petitioners are Degree holders of Unani Medical Services and registered Doctors under the Medical Council of India. The respondents issued an advertisement dated 19.09.2006 for the recruitment of 242 posts of Ayurvedic Chikitsak on contractual basis. It was further pleaded in the petition that the said notification/advertisement does not contain any reservation for Unani Degree holder Doctors. It was further pleaded that the service conditions of the Doctors of Ayurvedic and Unani for recruitment are governed by the U.P. State Chikitsa (Ayurvedic Evam Unani) Seva Niyamwali 1990 which has been adopted by the State of Uttaranchal (now 'Uttarakhand') by Adoption and Modification Order 2002. It was further alleged that no post out of 242 posts of Ayurvedic Chikitsak have been reserved or is to be filled by any Unani Degree doctors, while according to rules certain percentage of the Unani Degree holders has to be included. Feeling aggrieved by the said advertisement, the present writ petition has been filed by the petitioners.

4. The respondents have filed a short counter affidavit in which it has been stated as follows:-

"3. That the present writ petition has been filed by the petitioners for quashing the impugned advertisement dated 19.09.2006 and amended advertisement dated 13.10.2006 (Annexure Nos. 4 & 5 to the writ petition) on the ground that said advertisement are whole illegal and unjustified as the advertisement for 242 post of Medical Officers in Ayurvedic Hospitals in the State of Uttaranchal has been published ignoring the reservation as per percentage for registered Doctors holding Unani degree,

which is against the rule. The said ground taken by the petitioners is wholly erroneous and misconceived. The true fact is that in State of Uttaranchal including Unani and Ayurvedic Hospital there are 711 sanctioned posts out of which 708 post of Medical Officer are for Ayurvedic Dispensaries / Hospitals and only 3 are for Unani Dispensaries/ Hospitals. The said posts of Unani Medical Officers shall be filled from the Unani Degree Holder and shall not be filled from the Ayurvedic Degree Holders Medical Officers. Out of 708 posts of Ayurvedic Medical Officers, 49 post are already lying vacant and 193 post have been sanctioned vide Government order dated 6.9.2006 and accordingly the advertisement was published from Ayurvedic medical Officers having eligible qualification shown in the said advertisement for the Ayurvedic Wing Dispensaries under Allopathic Hospitals. At this relevant point of time is also relevant to state that the process for further creation/ sanction of more posts of Unani Hospitals / Dispensaries is under process which shall be filled through Unani Degree holders. Copy of the letter dated 18.12.2006 is being filed herewith and is marked as Annexure No. S.C.A.1 to this affidavit.”

5. The respondents have also annexed a letter dated 18.12.2006 of Director, Ayurvedic Avam Unani Services, Dehradun in which he has clearly indicated that the process for further creation or sanction of more posts for Unani hospitals/dispensaries is under process which shall be filled up through Unani Degree holders. In view of the above letter as well as the averment made in para 3 of the counter affidavit, learned counsel for the petitioner has no grievance at this stage.

6. Keeping in view of the averment made in the counter affidavit, the petition is hereby disposed of accordingly.

(Dharam Veer, J.)

(J.C.S. Rawat, J.)

Dated 25.06.2007

LSR

